



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/571,314

03/09/2006

Jean-Pascal Zambaux

06023

8360

23338 7590 08/30/2010
DENNISON, SCHULTZ & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

GRAY, PHILLIP A

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

08/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/571,314	Applicant(s) ZAMBAUX ET AL.	
	Examiner Phillip Gray	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/10, 12/3/09, 03/09/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's communication of 8/10/2010.
Currently claims 1-15 are pending and rejected below.

Response to Arguments

Applicant's arguments see response to Election/Restriction, filed 8/10/2010, with respect to the Restriction between groups I and II and election of species have been fully considered and the arguments are persuasive. The Restriction/Election requirement of 7/14/2010 has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over PALASIS et al (U.S. Pub 2002/0055721 A1) in view of WEBSTER, Jr. (U.S. Patent 5,057,092). Palasis discloses constructing a needle constituting a cylindrical body with a beveled end, the cylindrical body made of Polyarylethercetone Polymer of (PEEK) (see paragraph [0086], comprising reinforcement steel wires (paragraphs [0029]-[0030]), and (concerning claim 2) - fillers of carbon fiber, glass fiber, graphite granules (paragraph [0090]). Concerning claim 3 see paragraph [0029, and [0086-[0087]]

Palasis discloses the claimed invention except for the reinforcement wires being distributed such that each pair of wires defines an identical center angle. Webster teaches that it is known to use straight reinforcement wires on identical center angles as shown in figure 2 elements 28 and described as the longitudinal warp members as set forth in paragraphs at columns 2-3 to provide a control of the bending stiffness and rigidity of the tubular structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Palasis

Art Unit: 3767

with the reinforcements wires at the same angles as taught by Webster, since such a modification would provide the system with reinforcement wires on the same angles for providing a control of the bending stiffness and rigidity of the tubular structure.

Concerning claim 5, Palasis in view of Webster discloses the claimed invention except for the wires being elliptical rather than circular. It would have been an obvious matter of design choice to craft the circular wires in an elliptical shape, since applicant has not disclosed that elliptical wires solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the circular wires. Further a change in shape of a prior art device is a design consideration within the skill of the art. A PHOSITA is well aware of the similarity and interchangeability of a circular and/or elliptical wire shape in the industry.

Claims 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palasis in view of Webster as applied to claims 1-6 above, and further in view of Stawski. Stawski discloses a syringe (50) with injection needle beveled on both ends (60') a piston (66), a recipient connector (51) with a first hollow section and second hollow section (top and bottom of 53), a horizontal wall (52), and a means for perforation (62 needle), a port for admission of gas (70), means for attachment (59) see figures 3-4. Stawski discloses the claimed invention except for the PEEK needle with steel reinforcements. Palasis in view of Webster teaches that it is known to use the PEEK needle with steel reinforcements as set forth in rejection above to provide a biocompatible, durable, and control pharmaceutical effectiveness. It would have been

Art Unit: 3767

obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Stawski with a PEEK needle with steel reinforcements as taught by Palasis in view of Webster, since such a modification would provide the *system* with a PEEK needle with steel reinforcements for providing a biocompatible, durable, and control pharmaceutical effectiveness.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/
Examiner, Art Unit 3767

/KEVIN C. SIRMONS/
Supervisory Patent Examiner, Art Unit 3767